No. 86-1173

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1986

In the Matter of:

BASIL CHRIS ELIAS,

Petitioner.

v.

ILLINIOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION of the Supreme Court of Illinois

Respondent.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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10

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES CITED	ii
STATEMENT OF CASE	1
REASONS FOR DENYING THE WRIT	3
I. PETITIONER'S DUE PROCESS GUARANTEES WERE NOT VIOLATED IN THE ATTORNEY DISCIPLINARY PROCEEDINGS BROUGHT AGAINST HIM.	3
A. The Supreme Court of Illinois considered and correctly determined that he had sufficient notice of the charges to prepare his defense;	3
B. Documents admitted into evidence supported the allegations of the Complaint	4
II. THE SUPREME COURT OF ILINOIS DECISION IS IN ACCORD WITH RELEVANT UNITED STATES SUPREME COURT CASES	5
III. QUESTIONS OF THE SUFFICIENCY OF EVIDENCE ARE NOT REVIEWABLE BY THE SUPREME COURT	6

TABLE OF AUTHORITIES

	Page
Ex Parte Bradley, 74 U.S. (7 Wall.) 364 (1868) . .	5
Ex Parte Robinson, 86 U.S. (19 Wall.) 505 (1873)	5
In re Elias, 114 I11.2d 321, (1986)	4
In re Ruffalo, 390 U.S. 544 (1968)	3, 4, 5
Randall v. Brigham, 74 U.S. (7 Wall.) 523 (1868)	5
Thompson v. City of Louisville, 362 U.S. 199 (1960)	6

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STATEMENT OF CASE

On April 17, 1984, the Administrator of the Attorney Registration and Disciplinary Commission (Commission) filed a four count complaint against Petitioner, who was licensed to practice law in Illinois in 1959, charging him with professional misconduct. After the filing of his answer, a hearing was held.

On January 24, 1986, the Commission Hearing Board found that Petitioner had violated the Illinois Code of Professional Responsibility and recommended that he be reprimanded. Subsequently, the matter was considered by the Commission Review Board which determined that Petitioner should be disbarred. The matter then was heard by the Supreme Court of Illinois.

On October 1, 1986, the Supreme Court of Illinois entered its opinion suspending Petitioner for three years based on the misconduct charged in the complaint.

REASONS FOR DENYING THE WRIT

I. PETITIONER'S DUE PROCESS GUARANTEES WERE NOT VIOLATED IN THE ATTORNEY DISCIPLINARY PROCEEDINGS BROUGHT AGAINST HIM.

A. The Supreme Court of Illinois correctly determined that he had sufficient notice of the charges to prepare his defense.

In 1984, Petitioner was charged with a history of failing to deposit client settlement proceeds into trust accounts as required by the Illinois Code Professional Responsibility.

Specifically, Count One of the complaint charged that Petitioner opened five separate bank accounts, commingled client settlement proceeds with Petitioner's own funds, converted client funds, and allowed the bank accounts to be consistently overdrawn. Count Two alleged that Petitioner opened a bank account in the name of an associate, deposited client settlement proceeds into it, used the money for business and personal expenses, and allowed the account to be consistently overdrawn. As to both counts, Petitioner was informed of the precise rules of the Code of Professional Responsibility he violated.

Petitioner filed an answer to the charges and raised certain defenses. There was a hearing on the merits of the charges. After a complete review of the record, the Supreme Court of Illinois determined that Petitioner had engaged in a pattern of commingling and conversion in order to finance his personal and business activities. The court based its decision on the voluminous evidence of misconduct introduced at hearing. Thousands of documents, most of which were Petitioner's bank records, were admitted over his relevancy objections.

Petitioner claims his due process guarantees were violated and relies on *In re Ruffalo*, 390 U.S. 544 (1968). In support of this proposition, he claims that the Supreme

Court of Illinois made certain findings against him which were not the subject of the original complaint filed against him and thus deprived him of notice and opportunity to be heard on those matters.

As noted by the Supreme Court of Illinois, Petitioner's reliance on *Ruffalo* is misplaced.

> *Ruffalo* is clearly distinguishable from Petitioner's situation. In *Ruffalo*, the sole basis for disbarment from the Federal bar was an additional charge added to the complaint after the attorney testified in his own behalf in an effort to refute the charges contained in the original complaint. The Supreme Court held that the attorney had been denied fair and adequate notice necessary to defend the new charge and that this lack of notice constituted a violation of due process. Unlike *Ruffalo*, respondent cannot allege that additional charges have been lodged against him such that he has been deprived of the fair and adequate notice needed to present a defense. The "charges" to which respondent alludes are not charges at all. They are illustrative of respondents pattern and practice of commingling and conversion as charged in counts I and II of the Administrator's complaint. In challenging the actions of the Review Board, Petitioner is doing nothing more than attempting to label as new charges examples of transactions contained in the documentary evidence, properly admitted into the record, which support the allegations set out in counts I and II of the only complaint filed in this matter.

In re Elias, 114 See.2d 321, 336 (1986).

B. Documents admitted into evidence supported the allegations of the complaint.

The documents referred to by Petitioner throughout his Petition for a writ of certiorari do not stand as additional charges against him, but simply as evidence to support the alleged misconduct. Counts One and Two of the

complaint outline a pattern of wrongdoing. To demonstrate that such a pattern existed, it was necessary to introduce into evidence bank documents which supported the charges. As a result, Petitioner's own records were introduced into evidence. The Illinois Supreme Court was thus correct in holding that the documents were examples of transactions which clearly and convincingly established allegations of commingling and conversion. As noted by the court, if Petitioner sought additional specificity of the charges beyond that required by due process, it should have been secured by him through a request for a bill of particulars.

II. THE SUPREME COURT OF ILLINOIS DECISION IS IN ACCORD WITH RELEVANT UNITED STATES SUPREME COURT CASES.

In attorney disciplinary proceedings, this Court has consistently held that lawyers must be allowed notice and an opportunity to be heard. In *Ex Parte Bradley*, 74 U.S. (7 Wall.) 364 (1868), an attorney was accused of contempt of court. The Court held that a disbarment order entered against him was a violation of due process because the attorney had no notice or opportunity for defense. In that same year, the Court decided *Randall v. Brigham*, 74 U.S. (7 Wall.) 523 (1868). The Court held that formal allegations against the lawyer were not necessary, but due process again required notice and an opportunity for defense. In *Ex Parte Robinson*, 86 U.S. (19 Wall.) 505 (1873) the Court required notice and opportunity for explanation and defense. In one of the most recent disciplinary cases, *In re Ruffalo*, 390 U.S. 544 (1968), the Court pointed out that notice is required so the attorney may prepare a defense. The charge must be known before the proceedings commence. Otherwise, the proceedings become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start anew. *Ruffalo*, 390 U.S. at 551.

The Illinois Supreme Court held that the notice Petitioner received was sufficient to prepare his defense. He was permitted an opportunity to be heard. Thus, the analysis and holding follows the decisions of this Court.

III. QUESTIONS OF THE SUFFICIENCY OF EVIDENCE ARE NOT REVIEWABLE BY THE SUPREME COURT.

In *Thompson v. City of Louisville*, 362 U.S. 199 (1960), the Court stated that questions of the sufficiency of evidence will not be reviewed. A decision to review the merits of a case does not rely on the sufficiency of the evidence but on whether this conviction rests upon any evidence at all. *See e.g.*, *Thompson*, 362 U.S. at 199.

Petitioner's argument regarding the reliability of documents is a question of the sufficiency of evidence. Over one thousand exhibits were admitted, including evidence that, on over 800 occasions, Petitioner had overdrawn client trust accounts. Clearly this is not an issue of whether there is any evidence at all. Therefore, Petitioner's issue regarding the evidence is not an appropriate issue for review.

CONCLUSION

For the reasons set out above, Respondents respectfully submit the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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